IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4136 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

KALEKHAN @ MAJAMKHAN ABDEREHAMAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4136 of 2002

MS JAYSHREE C BHATT for Petitioner No. 1

MR AY KOGJE Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 24/06/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the District Magistrate, Dist. Kheda, at Nadiad dated 28.1.2002 in exercise of powers vested in

him by sub-section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

The petitioner has been branded as 'dangerous person' within the meaning of PASA Act. The detaining authority has found him involved in the offence related in dragging the abandoned cows and bullocks. He was also found involved in taking away the useful bullocks and selling it to the persons concerned with the slaughter house. The first offence was registered against the petitioner dated 9.10.2000 for the offence punishable under sec. 30911) of the Bombay Protection of Animals Act. The second offence has been registered on 26.5.2002 for the offence punishable under sec. 379 read with sec. 114 of IPC. It is the say of the sponsoring authority that the petitioner was found involved in taking away the useful bullocks from open field and to sent them slaughter house. The third offence registered is also of similar nature and the same has been registered on 7.7.2001.

The ground of detention does not reveal any aspects under which it can be inferred that the petitioner is a 'dangerous person'within the meaning of PASA Act. He is facing regular trial for the alleged offence and he has been enlarged on bail by the concerned court on proper scrutiny of the proper facts of these respective criminal cases.

Mr. AY Kogje learned AGP has strongly resisted and submitted that the activity of the detenu is not only inhuman but it is cruel to the animals like cows, buffalo ect. The agriculturalists who are keeping their live stock especially the useful bullocks in the open field are always in threats of such persons and it is difficult to prove such type of criminal cases at the conclusion of the trial, so the detention is the only preventive measures and, therefore, powers are rightly exercised in this case.

The court is not satisfied with the arguments made by the Ld. AGP. It is accepted proposition of law that unless the person is found a dangerous to the public order, he cannot be detained under the PASA Act. Even for the sake of arguments, the allegations made against the petitioner is accepted as correct, even than he can legitimately say that as and when occasion arises he is involving in the business of live stock and on such similar occasion old bullocks and cows are also part of their live stock. Such activities may not be a happy

situation in eye of some of the persons in the society but the Court is bound to consider the ratio of the decision in reference to the law of preventive detention and should not go by emotion. The Courts have focussed on the Constitution mandate as and when the case of a detenu has been considered and neither considered the nature of the offence nor the gravity. For short, the say of learned counsel Ms. JC Bhatt appearing for the petitioner is accepted.

In the result, this petition is allowed. The impugned order of detention dated 28.1.2002 passed by District Magistrate, dist. Kheda at Nadiad is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)
mandora/